

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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U.S. BANK TRUST, N.A., AS  
TRUSTEE OF AMERICAN  
HOMEOWNER PRESERVATION  
TRUST SERIES 2015A+,

22-CV-249 (JLS) (JJM)

Plaintiff,

v.

CITY OF BUFFALO, NEW YORK,  
BUFFALO SEWER AUTHORITY,

Defendants.

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### **DECISION AND ORDER**

Plaintiff commenced this action on March 28, 2022, when it filed the putative class action complaint. Dkt. 1. Defendants answered the complaint on April 25, 2022. Dkt. 3. Plaintiff sought, and obtained, two extensions of time to move for class certification from United States Magistrate Judge Jeremiah J. McCarthy,<sup>1</sup> with the deadline ultimately extended to April 1, 2023. *See* Dkt. 19; Dkt. 23.

On August 21, 2023, Defendants moved to dismiss for lack of prosecution. Dkt. 24. Instead of responding to the motion, Plaintiff's counsel moved to withdraw. Dkt. 26. Based on the parties' agreement, Judge McCarthy granted Defendants' motion to dismiss, as to the class allegations. Dkt. 29. Judge McCarthy set a status conference to address further proceedings as to Plaintiff's remaining individual

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<sup>1</sup> On April 27, 2022, this Court referred the case to Judge McCarthy for all pretrial matters, pursuant to 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 4.

claim and notified Plaintiff that, if it did not appear through new counsel at that time, he would “recommend that the remainder of the action be dismissed, with prejudice.” *Id.* When Plaintiff did not appear through counsel at that status conference,<sup>2</sup> Judge McCarthy stated that—as he previously cautioned—he would recommend dismissing the case with prejudice. Dkt. 33.

On November 10, 2023, Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that the Court dismiss the case, with prejudice, for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b). Dkt. 34. He emailed a copy of the R&R to Plaintiff’s purported new counsel.

Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

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<sup>2</sup> Judge McCarthy granted Plaintiff’s earlier request to adjourn the status conference. Dkt. 31.

Though not required to do so here, this Court nevertheless reviewed Judge McCarthy's R&R. Based on that review, and absent any objections, the Court accepts and adopts the R&R.

For the reasons stated above and in the R&R, the Court **dismisses the case, pursuant to Federal Rule of Civil Procedure 41(b)**. The Clerk of the Court shall close this case.

SO ORDERED.

Dated: February 29, 2024  
Buffalo, New York



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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE